

BULLETIN 97-2
November 6, 1997

This bulletin responds to numerous inquiries regarding the status of existing cable television franchises and how to bring competition into a community. The information contained in this bulletin should not be construed as an endorsement of any particular operator or of any position relevant to franchising. Rather, it is an attempt by the Division to clarify important issues surrounding the initiation of competition into the cable television marketplace in Massachusetts.

The following are some of the most frequent questions posed by municipal representatives and others contemplating cable competition in their communities.

1. *Our community is currently involved in the renewal process with its existing operator. Do we have to renew with it before bringing a competitor into town?*

Response:

No. A community is required to proceed with the renewal process as established under federal and state law, but may also initiate the franchise process for an additional operator or operators at the same time. All cable television licenses in the Commonwealth of Massachusetts are non-exclusive. This means that any community may at any time initiate the process whereby a competitor may commence cable service. Municipal representatives should keep in mind that under federal law, there is a presumption of renewal running in favor of the existing cable provider. This presumption arises from the reality that the existing operator has invested considerable time and money in each community where it operates. Congress established this presumption to protect operators from being indiscriminately or unjustifiably removed from communities, resulting in unwarranted interruptions and the loss of the operator's considerable financial investment in the system. There is, however, an established legal process each community must follow to legally deny a license to an operator.

2. *Does this presumption mean that our community will not be afforded an opportunity to conduct meaningful renewal negotiations with our current operator?*

Response:

No. Federal law has provided each party with protections throughout the renewal process. Additionally, the law spells out what areas may be negotiated with the operator. Communities may negotiate such terms as channel capacity, spending on public, educational and governmental access systems, institutional networks, system upgrades, areas to be served, the term of the renewal agreement, customer service standards, annual performance reviews and a variety of other provisions. As with all negotiations, results will vary by community depending upon local needs and preferences.

3. *Do we have to wait until we have completed the renewal process before we initiate the process of bringing a competitor on board?*

Response:

No. As previously noted, all licenses are non-exclusive. Your community may conduct renewal negotiations with your existing operator and initiate an initial licensing procedure to award other franchises at the same time. You may initiate the process of bringing competition to your community at any time.

4. *Our town is small. What are the chances that cable competitors will find an attractive business opportunity here?*

Response:

There are no guarantees that competitive providers will have the interest or the financial, technical and legal ability to offer cable services in your community. Traditionally, competitive cable operators did not overbuild communities (or seek a franchise after the initial franchise had been granted) because it was assumed that it would not be profitable to do so. Recently, however, at least one competitive video provider has begun to offer services in the City of Boston and will soon be offering services in other eastern Massachusetts communities. This is a first step towards truly competitive cable competition.

5. *How long does it take to complete the initial licensing process?*

Response:

Generally, the licensing process takes several months to complete. There are procedures outlined in federal law, the state cable act, and Division regulations. We have streamlined our regulations to encourage competition in Massachusetts. In addition, many communities in the initial licensing process have requested waivers of some of the state regulations, thereby speeding up the initial licensing process. All such requests are addressed and evaluated on an individual basis, but such waivers can simplify the process..

6. *Is there an alternative to the franchising process which would allow for competition sooner?*

Response:

The Telecommunications Act of 1996 created an exception for certain providers to bypass the cable franchising process called "open video systems" or OVS. Congress' intent was to encourage competition in a cable marketplace heretofore non-competitive. OVS operators are not required to enter into franchise agreements with local communities. However, municipalities may negotiate the extent of an OVS operator's PEG access obligations, and those obligations must be comparable to those imposed on the local cable franchisee. In addition, OVS operators are required to pay fees to the communities they service which are comparable to the franchise fees paid by incumbent cable providers. There are no licensing requirements for such operators to begin cable service in any community. However, an OVS operator is required to be certified by the FCC. The Division has prepared a detailed fact sheet on OVS which is available to all communities.

7. *How can we find out more about both the renewal process and how to go about initiating competition in our community?*

Response:

This Division has prepared a short and informative multimedia presentation which details the renewal process and answers the specific questions which issuing authorities and cable advisory panels have regarding this process. You may arrange for such a presentation in your community, in which we can also answer any additional questions about cable competition, by contacting our Municipal Liaison, Gordon Champion, DPU Cable Television Division, 133 Portland Street, 3rd Floor, Boston, MA, 02114, or at 617/727-6925.